



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/168359

PRELIMINARY RECITALS

Pursuant to a petition filed August 27, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, hearings were held on October 8, 2015 and January 14, 2016, at Milwaukee, Wisconsin. The matter was held open for the Petitioner to obtain additional information from ForwardHealth regarding the claims paid on her behalf. The record closed at the end of the second hearing on January 14, 2016.

The issue for determination is whether the agency properly seeks to recover an overissuance of BadgerCare Plus (BC+) benefits from the Petitioner in the amount of \$306.60 for the period of May 1 – 31, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

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Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Katherine May
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. On March 11, 2014, the agency issued a Notice of Decision to the Petitioner informing her that her BadgerCare Plus (BC+) benefits would be discontinued effective April 1, 2014 due to household income exceeding program limits.
3. On March 26, 2014, the Petitioner filed an appeal of the agency's determination with the Division of Hearings and Appeals and requested that her benefits be continued pending the appeal. Pursuant to the Petitioner's request, DHA ordered the agency to continue the Petitioner's benefits pending the appeal. This appeal was designated as DHA Case No. BCS/156403.
4. On April 17, 2014, the agency complied with the DHA order and paid a capitation rate of \$245.49 to an MCO for Petitioner's BC+ benefit coverage for the month of May, 2014.
5. On April 18, 2014, the Petitioner withdrew her appeal and DHA issued an order of dismissal for Case No. BCS/156403.
6. On June 30, 2014, the agency issued a notice of overissuance of BC+ benefits to the Petitioner informing her that the agency intended to recover an overissuance of BC+ benefits in the amount of \$875. The Petitioner did not appeal the overissuance action. On November 13, 2014, the agency issued an Order to Compel Payment to the Petitioner. On December 17, 2014, the Petitioner filed an appeal of the Order to Compel. This appeal was designated as DHA Case No. MAC/162695. A hearing was held in the matter. The ALJ determined there was no issue to determine and dismissed the Petitioner's appeal.
7. On May 15, 2015, the agency issued a notice of state tax intercept to the Petitioner informing her that the agency intended to intercept Petitioner's state tax refunds in the amount of \$875. On May 28, 2015, the Petitioner filed an appeal of the state tax intercept action. This appeal was designated as DHA Case No. MTI/166289. A hearing was held on August 13, 2015. The agency determined that it had erred in determining the amount of the overpayment. On August 17, 2015, a decision was issued remanding the matter to the agency to rescind the tax intercept notice. The agency withdrew the overpayment claim for \$875.
8. On August 18, 2015, the agency issued a new notice of overpayment to the Petitioner informing her that the agency intends to recover an overissuance of BC+ benefits in the amount of \$306.60 for May, 2014.
9. On August 27, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

Recovery of overpayments of Medicaid, including BadgerCare Plus, is authorized by Wis. Stat., §49.497(1). An "overpayment" occurs when Medicaid benefits are paid for someone who was not eligible for them, or when Medicaid payments are made in an incorrect amount. MA Handbook 22.2.1. Relevant to this case, the MA Handbook requires recovery of an overissuance that results from a member requesting the continuation of benefits pending an appeal if the appeal decision is not favorable to the member. MA Handbook, §22.2.1.1.

In this case, the Petitioner does not dispute that she initially requested the continuation of BC+ benefits when she filed her appeal on March 26, 2014. After discussions with agency representatives, the Petitioner decided to withdraw her appeal on April 18, 2014. This meant the agency's action to terminate her BC+ benefits in April was proper and she was not eligible for benefits in May, 2014. Unfortunately for the Petitioner, the date that the agency paid MCOs for all members for coverage for the month of May, 2014 was April 17, 2014 (also known as the "adverse action" date). There is no mechanism to cancel the coverage once the adverse action date passes. Because Petitioner was not eligible for Wisconsin Medicaid to pay for her coverage for May, 2014, the Petitioner became liable to repay the capitation rate of \$245.49 that Wisconsin Medicaid paid out on her behalf.

In addition to the capitation rate for May, 2014, several claims were submitted to the agency and paid by the agency for pharmacy. The agency properly seeks to recover the amount paid on those claims as well.

CONCLUSIONS OF LAW

The agency properly seeks to recover an overissuance of BC+ benefits in the amount of \$306.60 from the Petitioner for the period of May 1 – 31, 2014.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 5th day of February, 2016

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 5, 2016.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability